

# San Francisco Bay Conservation and Development Commission

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## Public Notice

August 2, 2023

### **NOTICE OF PROPOSED PROGRAM CHANGES TO THE SAN FRANCISCO BAY SEGMENT OF THE CALIFORNIA COASTAL MANAGEMENT PROGRAM**

#### **Amendments to San Francisco Bay Conservation and Development Commission Regulations Implementing the California Environmental Quality Act Title 14 of the California Code of Regulations, Division 5, Chapter 15**

Pursuant to the Coastal Zone Management Act regulations, 15 C.F.R. § 923.81(e), the San Francisco Bay Conservation and Development Commission (Commission) has submitted to the Office for Coastal Management (OCM) of the National Oceanic and Atmospheric Administration (NOAA) proposed program changes to the federally approved coastal management program for the San Francisco Bay segment of the California coastal zone. The Commission is requesting OCM concurrence for amendments to certain of the Commission's existing regulations that are codified at Title 14 of the California Code of Regulations, Division 5, Chapter 15, entitled "Implementation of the California Environmental Quality Act" (CEQA).

In summary, the amendments governing when the Commission is the CEQA lead agency:

- Add a regulation to address the Commission's obligations, upon completion of an environmental assessment, to consult with other public agencies having jurisdiction by law with respect to the proposed activity or which exercise authority over resources that may be affected by the proposed activity.
- Add a regulation to address how an environmental assessment will be made available for public review, clarify the requirement to prepare written responses to comments, and address how the written response to comments will be made available prior to the Commission's consideration of a proposed activity.
- Add a regulation to: (1) address the Commission's consideration and approval of an environmental assessment; (2) identify the documents that comprise the final environmental assessment; (3) address the findings to be made by the Commission if an environmental assessment identifies one or more significant environmental effects of a proposed activity; and (4) provide for adoption of a program for monitoring or reporting on revisions the Commission has required in a project or the measures it has imposed as conditions of approval to mitigate or avoid significant environmental effects.



- Add a regulation to restate the requirements, which are set forth in the Commission's permitting and planning regulations, to file of a notice of decision on a proposed activity with the Secretary of the Resources Agency.
- Clarify the two possible arrangements for retaining a consultant to prepare an environmental assessment; delete the existing requirement that a consultant establish a fixed cost for preparation of an environmental assessment; and clarify that, notwithstanding the fees and costs estimated by the selected consultant, the applicant shall be responsible for all consultant fees and costs to prepare the environmental assessment.
- Confirm that before using an environmental assessment prepared by a consultant, the Commission shall subject the environmental assessment to the agency's independent review and analysis.
- Eliminate former provisions that established nominal fees that were intended, but clearly were insufficient, to cover the Commission's costs to prepare an environmental assessment, and instead authorize the Commission to assess fees sufficient to recover its full costs to prepare an environmental assessment. Provide for monthly billing of costs incurred by the Commission and staff for preparation of an environmental assessment and require the applicant to pay such bills within 30 days of receipt.

In summary, the amendments governing when the Commission is a responsible agency:

- Acknowledge the duty of the Commission to respond to any request for consultation by the lead agency to ensure that the lead agency prepares an environmental document that meets the informational needs of the Commission.
- Delete the former requirement that an applicant prepare a written summary of any environmental document prepared by the lead agency.
- Delete the former requirement that the Executive Director include any final environmental document that is less than 10 pages in length, or a summary thereof if the document is longer than 10 pages in length, with the staff summary of the permit application. Instead, require that the Executive Director consider the environmental effects of the proposed activity as described in any environmental document prepared by the lead agency and summarize the environmental information contained therein as relevant to the Commission's statutory responsibilities in the application summary and/or staff recommendation on the permit application or in the staff planning report on a planning matter.
- Add provisions to: (1) address the findings to be made by the Commission if the lead agency's environmental document identifies one or more significant environmental effects of a proposed activity; and (2) provide for adoption of a program for monitoring or reporting on revisions the Commission has required in a project or the measures it has imposed as conditions of approval to mitigate or avoid significant environmental effects.

The Commission adopted the amendments on February 17, 2022. The California Office of Administrative Law approved the amendments on June 2, 2022, and the amendments became effective under California law on October 1, 2022.

The amendments do not add, modify, or delete any enforceable policies. The amendments are detailed in the program change submission documents available on the NOAA website here: <https://coast.noaa.gov/czmprogramchange/#/public/home> and on the Commission's website here: <https://www.bcdc.ca.gov/>

The NOAA OCM is reviewing the Commission's request for concurrence. Comments regarding the incorporation of the proposed program changes to the San Francisco Bay segment of the California Coastal Management Program should be submitted directly to NOAA OCM via the NOAA website listed above or by mail. Please send any written comments to:

Joelle Gore, Chief  
Stewardship Division  
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Comments will be accepted by OCM for three weeks (21 days) following the date of publication of this notice on August 2, 2023.